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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 PEDRO HERNANDEZ, individually,
13 Plaintiff,

14 v.

15 SAN BERNARDINO COUNTY, a
governmental entity, DOES 1 through 10,
16

17 Defendants

Case Number: 5:22-cv-01101-JGB-SP
Judge: Jesus G. Bernal
Mag. Judge: Sheri Pym

STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Defendant COUNTY OF SAN BERNARDINO (“Defendant”), contends that
3 discovery in this lawsuit (the “Action”) is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public disclosure
5 and from use for any purpose other than prosecuting this litigation may be warranted.
6 Accordingly, Defendant and Plaintiff PEDRO HERNANDEZ (“Plaintiff”), with Plaintiff
7 and Defendant collectively referred to herein as the “Parties” or individually as the
8 “Party,” hereby stipulate to and petition the Court to enter the following Stipulated
9 Protective Order (the “Protective Order”). The Parties acknowledge that this Protective
10 Order does not confer blanket protections on all disclosures or responses to discovery and
11 that the protection it affords from public disclosure and use extends only to the limited
12 information or items that are entitled to confidential treatment under the applicable legal
13 principles. The Parties further acknowledge, as set forth in Section 12.3, below, that this
14 Protective Order does not entitle them to file confidential information under seal; Civil
15 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
16 will be applied when a Party seeks permission from the Court to file material under seal.

17 **GOOD CAUSE STATEMENT**

18 This Action involves records of criminal arrest, incarceration, medical and mental
19 health treatment, and investigations performed by the San Bernardino County Sheriff’s
20 Department and its personnel, agents, and employees, and other third parties contracted
21 with the County. Defendant asserts that the underlying incident, and evidence thereof,
22 involves the identity of personnel, third-party witnesses, and others, that is private or
23 confidential in nature. Further confidential materials and information in this Action will
24 likely include descriptions and images of the interior of jail facilities, internal procedures
25 and policies of those jail facilities, and potentially the identity of law enforcement
26 personnel involved in various ongoing unrelated investigations. Further, Defendant
27 anticipates that Plaintiff will seek confidential documents in this matter which may
28 include, but are not limited to, personnel records of law enforcement officers,

1 employment records of healthcare providers, mental health and medical records, and
2 confidential information from the San Bernardino County Sheriff's Department
3 (including potential information implicating privacy of third parties) not generally
4 available to the public, or which may be privileged or otherwise protected from disclosure
5 under state or federal statutes, court rules, case decisions, or common law. Should this
6 information (photos, personnel records, private information of witnesses, etc.) be
7 disclosed without the protection of this Protective Order, and open access to the
8 information be allowed, the privacy and safety of those involved in this Action, and other
9 law enforcement matters, could be placed at risk.

10 Accordingly, to expedite the flow of information, facilitate the prompt resolution
11 of disputes over confidentiality of discovery materials, adequately protect information the
12 Parties are entitled to keep confidential, ensure the Parties are permitted reasonable and
13 necessary uses of such material in preparation for trial and address their handling at the
14 end of the litigation, and serve the ends of justice, a protective order for such information
15 is justified in this matter. It is the intent of the Parties that information will not be
16 designated as "confidential" for tactical reasons and that nothing be so designated without
17 a good faith belief that it has been maintained in a confidential, non-public manner, and
18 there is good cause why it should not be part of the public record in this Action.

19 2. DEFINITIONS

20 2.1 Action. This pending federal lawsuit entitled PEDRO HERNANDEZ v.
21 COUNTY OF SAN BERNARDINO, et al. case number 5:22-cv-01101-JGB-SP.

22 2.2 Challenging Party. A Party or Non-Party that challenges the designation of
23 information or items under this Protective Order.

24 2.3 "CONFIDENTIAL" Information or Items. Information (regardless of how
25 it was or is generated, stored, or maintained) or tangible things that qualify for protection
26 under Fed. R. Civ. P. 26(c), and as specified above in the Good Cause Statement above.

27 2.4 Counsel. Outside Counsel of Record and House Counsel, as these terms are
28 defined below (as well as their support staff).

1 2.5 Designating Party. A Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

3 2.6 Disclosure or Discovery Material. All items or information, regardless of
4 the medium or manner in which they are generated, stored, or maintained (including,
5 among other things, testimony, transcripts, and tangible things) that are produced or
6 generated in disclosures or responses to discovery in this matter.

7 2.7 Expert. A person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
9 expert witness or as a consultant in this Action.

10 2.8 House Counsel. Attorneys who are employees of a Party to this Action.
11 House Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.9 Non-Party. Any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this Action.

14 2.10 Outside Counsel of Record. Attorneys who are not employees of a Party to
15 this Action but are retained to represent or advise a Party to this Action and have appeared
16 in this Action on behalf of that Party or are affiliated with a law firm which has appeared
17 on behalf of that Party, and include support staff.

18 2.11 Party. Any Party to this Action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staff).

21 2.12 Producing Party. A Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.13 Professional Vendors. Persons or entities that produce litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
26 their employees and subcontractors.

27 2.14 Protected Material. Any Disclosure or Discovery Material that is designated
28 as “CONFIDENTIAL.”

1 2.15 Receiving Party. A Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Protective Order cover not only Protected
5 Material (as defined above), but also (1) any information copied or extracted from
6 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
7 Material; and (3) any testimony, conversations, or presentations by Parties or their
8 Counsel that might reveal Protected Material.

9 Any use of Protected Material at trial shall be governed by the orders of the trial
10 judge. This Protective Order does not govern the use of Protected Material at trial.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Protective Order shall remain in effect until a Designating Party agrees
14 otherwise in writing or a court order otherwise directs. Final disposition shall be deemed
15 to be the later of (1) dismissal of all claims and defenses in this Action, with or without
16 prejudice; or (2) final judgment herein after the completion and exhaustion of all appeals,
17 hearings, remands, trials, or reviews of the Action, including the time limits for filing any
18 motions or applications for extension of time pursuant to applicable law.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
21 Party or Non-Party that designates information or items for protection under this
22 Protective Order must take care to limit any such designation to specific material that
23 qualifies under the appropriate standards. The Designating Party must designate for
24 protection only those parts of material, documents, items, or oral or written
25 communications that qualify so that other portions of the material, documents, items, or
26 communications for which protection is not warranted are not swept unjustifiably within
27 the ambit of this Protective Order.

28 Mass, indiscriminate, or routinized designations are prohibited. Designations that

1 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
2 to unnecessarily encumber the case development process or to impose unnecessary
3 expenses and burdens on other parties) may expose the Designating Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it
5 designated for protection do not qualify for protection, that Designating Party must
6 promptly notify all other Parties that it is withdrawing the inapplicable designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this
8 Protective Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under
10 this Protective Order must be clearly so designated before the material is disclosed or
11 produced.

12 Designation in conformity with this Protective Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents,
14 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
15 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
16 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
17 portion or portions of the material on a page qualifies for protection, the Producing Party
18 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
19 in the margins).

20 A Party or Non-Party that makes original documents available for inspection need
21 not designate them for protection until after the inspecting Party has indicated which
22 documents it would like copied and produced. During the inspection and before the
23 designation, all of the material made available for inspection shall be deemed
24 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
25 copied and produced, the Producing Party must determine which documents, or portions
26 thereof, qualify for protection under this Protective Order. Then, before producing the
27 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to
28 each page that contains Protected Material. If only a portion or portions of the material

1 on a page qualifies for protection, the Producing Party must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in depositions, that the Designating Party identify before
4 the close of the deposition, all protected testimony or deposition exhibits that contain
5 CONFIDENTIAL Information or Items. The court reporter shall then affix the
6 “CONFIDENTIAL” legend to each page of the transcript or deposition exhibit that
7 contains Protected Material and may separately bound such designated transcript pages
8 and deposition exhibits.

9 (c) for information produced in some form other than documentary, and for any
10 other tangible items, that the Producing Party affix in a prominent place on the exterior
11 of the container or containers in which the information is stored the legend
12 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
13 the Producing Party, to the extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
15 to designate qualified information or items does not, standing alone, waive the
16 Designating Party’s right to secure protection under this Protective Order for such
17 material. Upon timely correction of a designation, the Receiving Party must make
18 reasonable efforts to assure that the material is treated in accordance with the provisions
19 of this Protective Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
22 of confidentiality at any time that is consistent with the Court’s orders.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
24 process under Local Rule 37.1 et seq.

25 6.3 Burden. The burden of persuasion in any such challenge proceeding shall
26 be on the Designating Party. Frivolous challenges, and those made for an improper
27 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties),
28 may expose the Challenging Party to sanctions. Unless the Designating Party has waived

1 or withdrawn the CONFIDENTIAL designation, all Parties shall continue to afford the
2 material in question the level of protection to which it is entitled under the Producing
3 Party's designation until the Court rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this Action
7 only for prosecuting, defending, or attempting to settle this Action. Such Protected
8 Material may be disclosed only to the categories of persons and under the conditions
9 described in this Protective Order. When the Action has been terminated, a Receiving
10 Party must comply with the provisions of Section 13 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location
12 and in a secure manner that ensures that access is limited only to the persons authorized
13 under this Protective Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
15 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
16 may disclose any information or item designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
18 employees of the Outside Counsel of Record to whom it is reasonably necessary to
19 disclose the information for this Action.

20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Protective Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (d) the Court and its personnel;

26 (e) court reporters and their staff;

27 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
28 to whom disclosure is reasonably necessary for this Action and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (g) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information;

4 (h) during their depositions, witnesses and attorneys for witnesses, in the Action
5 to whom disclosure is reasonably necessary provided: (1) the deposing party requests that
6 the witness and attorneys for the witness sign the “Acknowledgment and Agreement to
7 Be Bound” form (Exhibit A); and (2) they will not be permitted to keep any
8 CONFIDENTIAL” Information or Items unless they sign the “Acknowledgment and
9 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party,
10 or ordered by the Court. Pages of transcribed deposition testimony or exhibits to
11 depositions that reveal Protected Material may be separately bound by the court reporter
12 and shall not be disclosed to anyone except as permitted under this Protective Order; and

13 (i) any mediator or settlement officer, and their supporting personnel, mutually
14 agreed upon by any of the Parties engaged in settlement discussions.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
16 OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation that
18 compels disclosure of any information or items designated in this Action as
19 “CONFIDENTIAL,” that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification shall
21 include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to
23 issue in the other litigation that some or all of the material covered by the subpoena or
24 order is subject to this Protective Order. Such notification shall include a copy of this
25 Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be pursued by
27 the Designating Party whose Protected Material may be affected.

28 If the Designating Party timely seeks a protective order, the Party served with the

1 subpoena or court order shall not produce any information designated in this Action as
2 “CONFIDENTIAL” before a determination by the court from which the subpoena or
3 order issued, unless the Party has obtained the Designating Party’s written permission.
4 The Designating Party shall bear the burden and expense of seeking protection in that
5 court of its CONFIDENTIAL Information or Items, and nothing in these provisions
6 should be construed as authorizing or encouraging a Receiving Party in this Action to
7 disobey a lawful directive from another court.

8 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
9 IN THIS LITIGATION

10 9.1 Non-Party Confidentiality. The terms of this Protective Order are applicable
11 to information produced by a Non-Party in this Action and designated as
12 “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this
13 litigation is protected by the remedies and relief provided by this Protective Order.
14 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
15 additional protections.

16 9.2 Request for Non-Party Confidential Information. In the event that a Party is
17 required, by a valid discovery request, to produce a Non-Party’s confidential information
18 in its possession, and the Party is subject to an agreement with the Non-Party not to
19 produce the Non-Party’s confidential information, then the Party shall:

20 (a) promptly notify in writing the Requesting Party and the Non-Party that some
21 or all of the information requested is subject to a confidentiality agreement with a Non-
22 Party.

23 (b) promptly provide the Non-Party with a copy of this Protective Order, the
24 relevant discovery request(s), and a reasonably specific description of the information
25 requested; and

26 (c) make the information requested available for inspection by the Non-Party, if
27 requested.

28 9.3 Non-Party’s Recourse. If the Non-Party fails to seek a protective order from

1 this Court within 14 days of receiving the notice and accompanying information, the
2 Receiving Party may produce the Non-Party's confidential information responsive to the
3 discovery request. If the Non-Party timely seeks a protective order, the Receiving Party
4 shall not produce any information in its possession or control that is subject to the
5 confidentiality agreement with the Non-Party before determination by the Court. Absent
6 a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
7 protection in this Court of its confidential information.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
10 Protected Material to any person or in any circumstances not authorized under this
11 Protective Order, the Receiving Party must immediately (a) notify in writing the
12 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
13 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
14 unauthorized disclosures were made of all the terms of this Protective Order, and (d)
15 request such person or persons to execute the "Acknowledgment and Agreement to Be
16 Bound" that is attached hereto as Exhibit A.

17 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
18 PROTECTED MATERIAL

19 When a Producing Party gives notice to the Receiving Parties that certain
20 inadvertently produced material is subject to a claim of privilege or other protections, the
21 obligations of the Receiving Parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This
22 provision is not intended to modify whatever procedure may be established in an e-
23 discovery order that provides for production without prior privilege review. Pursuant to
24 Federal Rule of Evidence 502(d) and (e), insofar as the Parties reach an agreement on the
25 effect of disclosure of a communication or information covered by the attorney-client
26 privilege or work product protection, the Parties may incorporate their agreement in this
27 Protective Order or another stipulated protective order.

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12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Protective Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to the use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

13. FINAL DISPOSITION

After the final deposition of this Action, as defined in Section 4 above, each Receiving Party must return all Protected Material to the Producing Party or destroy such material within 30 days. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 30-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work

product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. VIOLATIONS

Any violation of this Protective Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Pursuant to Local Rule 5-4.3.4, by my signature below I, John M. Fujii, attest that all other signatories concur in this filing's content and have authorized this filing.

Dated: July 14, 2023

SILVER & WRIGHT LLP

By: /s/ John M. Fujii
JOHN M. FUJII
MAHADHI CORZANO
Attorneys for Defendant
County of San Bernardino

Dated: July 14, 2023

THE SEHAT LAW FIRM, PLC

By: /s/ Cameron Sehat
CAMERON SEHAT
Attorney for Plaintiff
Pedro Hernandez

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: July 17, 2023 _____



HON. SHERI PYM
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____, [print or type full name], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on date _____ [date] in the Action of **PEDRO HERNANDEZ v. COUNTY OF SAN BERNARDINO, et al. case number 5:22-cv-01101-JGB-SP**. I agree to comply with and to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Protective Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this Action.

I hereby appoint _____ as my California agent for service of process in connection with this Action or any proceedings related to enforcement of this Protective Order.